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36 CFR Ch. II (7–1–00 Edition)

the provisions of 36 CFR part 211, subpart B.

(25 Stat. 357, 26 Stat. 1103, 30 Stat. 35–36, 1233, 38 Stat. 430, 46 Stat. 1421, 64 Stat. 82, 72 Stat. 885, as amended, 74 Stat. 215, 78 Stat. 1089; 16 U.S.C. 471, 478, 498, 525, 528–531, 532, 538, 551, 572, 23 U.S.C. 101, 205, 40 U.S.C. 257, 258a et seq.; 42 Atty. Gen. Op. No. 7; Comp. Gen. B-65972, May 19, 1947; 40 Comp. Gen. 372; 41 Comp. Gen. 1; 41 Comp. Gen. 576, and 42 Comp. Gen. 590)

[30 FR 5476, Apr. 16, 1965, as amended at 39 FR 27650, July 31, 1974; 48 FR 28638, June 23, 1983. Redesignated and amended at 62 FR 58654, Oct. 30, 1997]

§212.9 Principles for sharing use of roads.

The use of roads under arrangements for sharing costs or performance shall be in accordance with the following:

(a) *Road improvement.* Use of a road for commercial hauling, except occasional or minor amounts, will be conditioned upon improvement or supplemental construction of the road to safety and economically serve the contemplated use, unless the Chief determines that the safety and economy of the established and foreseeable use by the United States, its users and co-operators will not be impaired by the use for which application is being made. With the consent of the Chief the applicant may deposit funds in the estimated amount required for the improvements or supplemental construction in lieu of performance. Such funds will be used by the Forest Service to do the planned work. The cost of the improvements or supplemental construction will be taken into account in determining any otherwise required contribution to cover the proportionate share of the cost of road acquisition, construction, reconstruction or improvement attributable to the use.

(b) *Corresponding benefits.* Corresponding benefits which may be accepted by the Chief for sharing road use will be those which bear a reasonable relation to the management of lands administered by the Forest Service. They may be in the form of:

(1) Deposit of funds with the Forest Service for use in paying the cost of road construction, reconstruction, or improvement to be borne by the user;

(2) The grant of a reciprocal right of substantially similar value to the road use sought;

(3) Construction, reconstruction, or improvement by applicant of a road needed for access to and use of lands administered by the Forest Service; or

(4) any combination of these.

(c) *Cost determinations for roads cooperatively constructed under agreements.* When roads are constructed under cooperative agreements to meet mutual needs of the United States and others for access, determinations of the shares of costs to be borne by the United States and the cooperating parties will include consideration of:

(1) The standard of road required for the planned hauling;

(2) The share of planned use;

(3) The location and volume of tributary timber owned by each party and expected to be hauled over the road or roads;

(4) The tributary areas owned or controlled by each party;

(5) Expected use by the public; and

(6) Other appropriate considerations.

(d) *Cost recovery by the United States from others.* When roads are used under permit for commercial hauling instead of under cooperative agreement, any cost to be recovered by the United States will be calculated in proportion to the planned use of the road. The road cost used in such calculation will be the amount or estimated amount expended in the acquisition, construction, reconstruction, and improvement of that capacity of the road required to serve the use needs of all parties that are or reasonably can be expected to use the road. The road costs shall not exceed the replacement value of the road. Such road share-cost payments will be through deposits in advance of use unless the user provides a payment bond satisfactory to the Chief guaranteeing that payments will be made promptly upon billing by the Forest Service.

(e) *Cost sharing with a cooperator.* The costs to achieve the agreed upon road or road system may be met by:

(1) Use of appropriated funds;

(2) Construction, reconstruction, or improvement of roads or segments of roads by purchasers of products from

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lands administered by the Forest Service or other users;

(3) Use of deposits made by cooperator with the Forest Service to cover cooperator's agreed share;

(4) Agreement with cooperator pursuant to which cooperator does more than his agreed share of constructing, reconstructing, or improving a road and recovers costs incurred in excess of his agreed share by charging purchasers of products from lands administered by the Forest Service an equitable amount within the limits and to the total amount specified in the agreement; or

(5) A combination of the aforementioned methods.

(f) *Road maintenance and resurfacing.* Cooperators will share the road maintenance and resurfacing costs under suitable agreements to perform, arrange for performance by others, or by making deposits with the Forest Service which will be used to pay the cost of work necessary to keep such roads in satisfactory condition commensurate with use requirements of each cooperator. No cooperator shall be required to perform or bear such costs other than those occasioned by its individual use. Other users will bear costs in accordance with §212.5(d).

(g) *Interests to be acquired by the United States in roads or easements therefor.* Where the United States is to bear or share the cost of constructing or improving, or acquiring a road system, a road, or a segment thereof, or acquires an easement therefor, the interest acquired will:

(1) Be for perpetual use unless the road use falls within the limited classes where temporary roads or roads for limited periods are acceptable;

(2) Provide adequately for foreseeable management, protection, and utilization needs of lands administered by the Forest Service and intermingled and adjacent private and public lands and for the use and development of the resources upon which communities within or adjacent to the National Forest are dependent; and

(3) not be subject to conditions, reservations, or covenants unrelated to the road use, or which seek or might tend to direct or limit policies and pro-

cedures for management of lands administered by the Forest Service.

(25 Stat. 357, 26 Stat. 1103, 30 Stat. 35-36, 1233, 38 Stat. 430, 46 Stat. 1421, 64 Stat. 82, 72 Stat. 885, as amended, 74 Stat. 215, 78 Stat. 1089; 16 U.S.C. 471, 478, 498, 525, 528-531, 532, 538, 551, 572, 23 U.S.C. 101, 205, 40 U.S.C. 257, 258a et seq.; 42 Atty. Gen. Op. No. 7; Comp. Gen. B-65972, May 19, 1947; 40 Comp. Gen. 372; 41 Comp. Gen. 1; 41 Comp. Gen. 576, and 42 Comp. Gen. 590)

[30 FR 5478, Apr. 16, 1965, as amended at 39 FR 27650, July 31, 1974. Redesignated and amended at 62 FR 58654, Oct. 30, 1997]

§212.10 Maximum economy forest development roads.

The Chief may acquire, construct, reconstruct, improve, and maintain forest development roads within and near the National Forests and other lands administered by the Forest Service in locations and according to specifications which will permit maximum economy in harvesting timber from such lands tributary to such roads and at the same time meet the requirements for protection, development, and management thereof and for utilization of the other resources thereof. Financing of such roads may be accomplished—

(a) By the Chief utilizing appropriated funds,

(b) By requirements on purchasers of National Forest timber and other products, including provisions for amortization of road costs in contracts,

(c) By cooperative financing with other public agencies and with private agencies or persons, or

(d) By a combination of these methods: *Provided*, That where roads of a higher standard than that needed in the harvesting and removal of the timber and other products covered by the particular sale are to be constructed, the purchaser of the National Forest timber and other products shall not be required to bear that part of the costs necessary to meet such higher standard, and the Chief may make such arrangements to this end as may be appropriate, including arrangements for performance of purchaser's road development work under the Act of March 3,